

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 191 of 2020**Tuesday, this the 18th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Service No. 14422770W Ex Naik Baraiya Jasvant Singh Bhem Singh, son of Bhem Singh, permanent address: Village-Kamraj, Post-Gotapur, Tehsil-Bayand, Distt-Sabarkanta, last parent unit-253 Med Regt under HQ 33 Arty Bde, C/o 56 APO, Record Office-Arty Records, Nasik Road Camp (MH) 422102, presently residing C/o J.W.O. RS Dubey (Adv) House No. 2318/4, Vivek Nagar, Distt-Sultanpur (U.P.)-228001.

..... Applicant

Ld. Counsel for the : **Shri Shyam Bihari Tiwari**, Advocate.
Applicant

Versus

1. Union of India, Secretary to Govt of India, MoD, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQs of MoD (Army), New Delhi-110011.
3. P.C.D.A. (Pension), Draupadi Ghat, Prayagraj (UP)-211014.
4. OIC Chief Record Officer, Arty Records, Nasik Road Camp (MH)-422102.
5. Commander, HQ 33 Arty Bde, C/o 56 APO.

..... Respondents

Ld. Counsel for the
Respondents.

Shri Yogesh Kesarwani,
Central Govt. Standing Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) To set aside/quash the order of discharge mentioned on page 08, Serial No 09 as contained in Annexure A-1 (Discharge Book), locally discharged from service being undesirable under item 13 (III) (V) of Army Rule, 1954 and reconfirmed under letter No 14422770W/T-5/UD/NE-1 dt 18 Aug 2017 & 29 Dec 2018 annexed as annexure-A11 & 12.

(b) To re-instate the applicant in Army w.e.f. 06 Mar 2010 after considering all facts and circumstances at this Hon'ble Tribunal may deem fit proper and just, in the eye of law, in the interest of justice otherwise the applicant will suffer irreparable losses and injuries.

(c) To grant suitable and justified damages/compensations from the respondents to the applicant.

(d) To issue an order or direction that this Hon'ble Tribunal may deem fit and proper under the facts and the circumstances of the case, in favour of the applicant, against the respondents.

2. Brief facts of the case are that the applicant was enrolled in the Army on 26.02.1997. On completion of military training, he was posted to 253 Medium Regiment. While serving with this regiment the applicant was locally discharged from service w.e.f. 06.03.2010 under Rule 13 (3) III (v) of Army Rules, 1954 being an undesirable soldier. The records reveal that he was awarded 09 punishments during his service on different counts by different Commanding Officers mainly due to overstaying leave and intoxication. Since conduct of the applicant was having an adverse effect on all ranks of the unit, a Show Cause Notice (SCN) dated 20.08.2009 was served upon applicant to which he replied on 08.09.2009 accepting his guilt

and requesting to allow him to continue in service. Having considered the reply of the applicant insufficient and keeping in view of applicant's poor disciplinary records, his retention in service was not considered appropriate. Accordingly, he was discharged from service as an undesirable soldier w.e.f. 06.03.2010. This O.A. has been filed for quashing the discharge order dated 06.03.2010 and re-instate him into service.

3. Submission of learned counsel for the applicant is that the applicant was forcibly and arbitrarily discharged from service even when he had actively and successfully participated in Kargil operation and won medals and decorations like Op Vijay Star, Special Service Medal with Suraksha and 09 years Long Service Medal and his character was assessed as fair as mentioned on page 9 of discharge book (Annexure A-1). His further submission is that the unit authorities formed an escort led by Sub Nabab Singh, Gnr Umesh Kumar and one other soldier and dropped him at Mathura where his wife was residing. His other submission is that the applicant has written several letters to the highest dignitaries i.e. the President, Prime Minister, Defence Minister and Chief of the Army Staff for his re-instatement into service and payment of his dues but there was no response till date. His further submission is that during the process of his local discharge he was not allowed to meet the Commanding Officer and the Brigade Commander for

redressal of his grievance in utter violation of natural justice. In support of his contention learned counsel for the applicant has cited judgment dated 30.07.2010 delivered by this Tribunal in T.A. No. 161 of 2010 titled **Ram Narayan Singh vs Union of India & Ors**, judgment dated 11.09.2002 delivered by the Hon'ble Delhi High Court in CWP No 2497 of 2001 titled **Surinder Singh Sihag vs Union of India & Ors** and judgment dated 15.05.2009 in SWP No 1920 of 2001 titled **Rfn Tilak Raj vs Union of India & Ors** and pleaded that the applicant be re-instated into service and granted dues payable to him.

4. On the other hand submission of learned counsel for the respondents is that applicant proved himself time and again as undisciplined soldier and was awarded more than four red ink entries. His further submission is that in fact applicant was awarded nine (09) punishments during his service span of 13 years in which he overstayed leave for 279 days. He further submitted that the applicant was also awarded punishment for intoxication and loss of personal identity card. He was advised time and again to improve his conduct. A Show Cause Notice dated 20.08.2009 was issued to the applicant and in his reply dated 08.09.2009 he accepted his guilt but requested to serve further which was not accepted by the competent authority in view of his past punishments and lackadaisical attitude towards the Army and he was discharged from service being an

undesirable soldier in terms of Rule 13 (3) III (v) of Army Rules, 1954. He pleaded for dismissal of O.A.

5. Heard learned counsel for both the sides and perused the material placed on record.

6. After going through the record we find that the applicant during his 13 years of service overstayed leave for 279 days and he was awarded punishment 09 times on account of overstaying leave, intoxication and loss of identity card as under:-

S. No.	AA Sec	Date of punishment	Punishment awarded	Type of offence
1.	39(b)	24.05.2000	10 days pay fine	Overstaying leave (OSL 4 days)
2.	39(b)	04.02.2005	14 days pay fine	Overstaying leave (OSL-77 days)
3.	39(b)	06.06.2007	14 days pay fine	Overstaying leave (OSL-59 days)
4.	48	14.06.2007	Severe Reprimand	Intoxication
5.	48	31.10.2007	14 days pay fine	Intoxication
6.	39 (b)	09.09.2008	Severe Reprimand	OSL (81 days)
7.	54(b)	06.10.2008	Severe Reprimand	Loss of Identity Card (Govt property)
8.	48	12.12.2008	Severe Reprimand	Intoxication
9.	39 (b)	20.04.2009	Severe Reprimand	Overstaying leave (OSL-57 days)
Total Overstayed leave-279 days				

7. In respect of each of the above offences culminating in red ink entries, the charges against the individual were heard by the Commanding Officer and the applicant was given full liberty to make any statement in his defence and after following the due procedure, appropriate punishments were awarded. Prior to discharge from service preliminary inquiry as per para 5 (a) of policy letter dated 28.12.1988 was conducted and the applicant was issued show cause notice dated 20.08.2009

which was replied by the applicant on 08.09.2009 in which he accepted his guilt but requested to allow him to serve further. The reply was carefully considered by the competent authority and keeping in view of applicant's poor disciplinary record his retention in service was not considered appropriate and he was discharged from service being an undesirable soldier. Thus, the process of discharge seems to be sufficient.

8. Vide para 5 h (i) of O.A. applicant has submitted that he was not paid his dues. In this regard the respondents have submitted that the applicant was paid Rs 1,03,020/- (Death-cum-retirement gratuity), Rs 2,06,040/- (Service gratuity), Rs 1,66,978/- (AFPP Fund), Rs 63,920/- (Encashment of leave), Rs 85,152/- (Army Group Insurance Fund) and Rs 71,383/- (Credit balance-final settlement of account). Therefore, contention of applicant that he was not paid his dues is incorrect.

9. The applicant was discharged from service on administrative grounds i.e. for earning more than 04 red ink entry punishments before completing 15 years of physical service in the Army which makes him not eligible for pension. Further, since the applicant was discharged from service under the provisions of Army HQs policy letter dated 20.07.2006 as his services were no longer required being an undesirable soldier, therefore, the applicant cannot be re-instated into service.

10. Maintenance of discipline is of paramount importance in the Army. Being a habitual offender with no regard to military discipline, applicant's retention in service was considered detrimental for the troops. Based on past record, a Show Cause Notice was served to the applicant by the Commanding Officer, 253 Medium Regiment before recommending his discharge to the competent authority. Scrutiny of the records brings out that the applicant is a habitual offender who overstayed leave for 279 days in his 13 years of service, meaning thereby that whenever he availed leave, he overstayed the same putting difficulty to the unit authorities in management of leave for the entire unit. Since the applicant had accepted his guilt, minor punishments were awarded with a view that he would not repeat the offences and improve his behaviour and attitude, but despite receiving minor punishments and verbal counseling, he continued to repeat such offences willfully. The competent authority to sanction discharge i.e. Brigade Commander, after applying his mind to the contents of the case history gave his consent to the discharge proceedings.

11. We have gone through the cases relied upon by the applicant and we find that the referred citations are of no help to him being not symmetrical to the case in hand. In those cases applicants had rendered more than 13 years of service but in the instant case though the applicant has rendered 13

years of service but this period also includes 279 days as non qualifying service (overstaying of leave) which makes it clear that applicant has not put in 13 years of qualifying service.

12. In the light of the foregoing, we are of the view that the number of red ink entries alone is not the criteria for discharge under Army Rule 13 (3) III (v). Four red ink entries are only a guideline. The disciplinary conduct of the individual as reflected in the service record and the requirement of maintaining discipline would decide if services are no longer required. This is an administrative action resulting from an unsatisfactory record of service of the applicant.

13. Thus, having considered all aspects of the matter, we find no grounds to interfere with the discharge order of the applicant under Army Rule 13 (3) item III (v). The O.A. is accordingly **dismissed**.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 18.01.2022
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